IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

FIRST APPEAL NO. 3 OF 2003

Imla Malik Sangh, an Association
having office at Janata Colony,
Jogeshwari (E), Mumbai - 400 060. ... Appellants

V/s

Municipal Corpn. of Gr. Bombay. ... Respondents

Shri D.R. Shah for the appellants.

Mrs. Vidya Khatu for the respondents.

CORAM: P.V. KAKADE, J.

DATED: 14TH OCT., 2004.

P.C.:

1. Heard learned counsel for both parties.

2. Rule. Rule made returnable forthwith.

3. The suit was filed by the appellants-plaintiffs which is the Association of persons, styled as Imla Malik Sangh. Members of the said association have their respective structures at Janata Colony, Jogeshwari (E), Mumbai - 400 060. The plaintiffs state that, in the year 1950-53 a scheme of rehabilitation and settlement of hutment dwellers of various parts of the city of

Bombay and shifting them to suburban areas of Greater Bombay was implemented with a view to obtain vacant possession of the area occupied by them in the prime locality of the city. Members of the plaintiffs Association were then occupying at relevant time the hutments in the city of Bombay. In purcuanse of the said scheme, defendants Corporation allotted members of the plaintiffs Association an area admeasuring 15’ x 20’ i.e. 300 sq.ft. each from the land bearing Survey No.62 of village Majas, Jogeshwari (E), Bombay Suburban District, formerly known as Janata Colony, on payment of ground rent per month. After such allotment and prior to 1962 each of the members constructed structures thereon and all such structures were assessed by the defendants-Corporation in the name of respective members of the plaintiffs Association. Also the allottees-cum-tenants and members of the plaintiffs association were thus liable to pay the ground rent in respect of the said land/plot to the defendants Corporation. Thereafter the Corporation sought collection of rent/compensation from the plaintiffs’ said members and/or their tenants in respect of the structures standing on the land of the said Colony for which purpose the suit for injunction came to be filed.

The suit was challenged by the Corporation on the ground that they were entitled to collect such compensation amount. On such and other grounds, the suit was sought to be dismissed.

The learned Trial Judge raised certain issues and adjudicated the dispute after recording the evidence of both parties and held that the suit deserves to be dismissed and order to that effect was passed on 11.6.2002.

4. After hearing both parties for some time, it is obvious on perusal of the judgment of the lower Court that the crux of the matter which was pleaded by both parties did culminate in raising of Issue Nos. 3 and 4 i.e. whether the suit land was declared as slum, which was answered in the negative and, whether the defendants did prove that the plaintiffs were liable to pay compensation/licence fee and service charges to defendants, which is also answered in the negative. However, perusal of the entire judgment shows that, on the findings and reasonings, for evidence, recorded on Issue Nos. 3 & 4 are conspicuously silent. In para 17 of the judgment, the learned Trial Judge has just referred to Issue Nos. 3 & 4 and has recorded that

there is no substantive evidence on behalf of the defendants and therefore Issue Nos.3 & 4 were answered in negative. It is to be noted that, if the finding on Issue No.4 is in the negative, then the suit should have been decreed in normal course. Similarly, it was stated at the bar on behalf of the defendants Corporation that the land is declared slum, however, the finding on Issue No.3 is contrary to that submission and there is nothing on record to indicate that the said issue is judicially assessed and finding is recorded. In view of this situation, the only way remains is to remand the matter to the lower Court for adjudication afresh on the said issues. Hence the following order :-

O R D E R

The appeal is allowed.

The order dated 11.6.2002 passed by the lower Court dismissing the plaintiffs' suit is set aside.

The matter is remanded to the lower Court for adjudication afresh. The lower Court shall give opportunity to both parties to lead evidence, if any, and then decide the suit on merits within six months

from the date of this order.

Pending adjudication by the lower Court, both parties shall maintain status-quo with regard to the dispute involved.

With these directions, the appeal stands disposed of with no order as to costs.

Civil application also stands disposed of with no order as to costs.

Plaintiffs Association is given liberty to seek amendment of the plaint, if any, before the lower Court.

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